Supreme Court, U.S.
FILED
MAR 9 - 2005
OFFICE OF THE CLERK

No. 04-1062

In The Supreme Court of the United States

STEVEN RUSHING,

Petitioner,

versus

THE BOARD OF SUPERVISORS FOR THE UNIVERSITY OF LOUISIANA SYSTEM (SOUTHEASTERN LOUISIANA UNIVERSITY),

Respondent.

On Petition For Writ Of Certiorari To The First Circuit Court Of Appeal Of The State Of Louisiana

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CHARLES C. FOTI, JR.
Attorney General
State of Louisiana

WINSTON G. DECUIR, SR.*
Special Assistant Attorney General
LINDA LAW CLARK
Special Assistant Attorney General
DECUIR, CLARK AND ADAMS, L.L.P.
1961 Government Street
Baton Rouge, LA 70806
Phone: (225) 346-8716
Attorneys for Respondent

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Was the Court of Appeal correct in dismissing petitioner's due process claim when it determined that no federally protected property interest or state contract interest existed?

2. Did the Court of Appeal correctly apply *Connick v. Myers*, 461 U.S. 138 (1983) in determining that petitioner's request for funding to participate in theatrical productions was a matter of personal interest and not public concern?

3. Was the Court of Appeal correct in dismissing petitioner's retaliation claims under the Americans with Disabilities Act (ADA) and Title VII?

PARTIES TO THE PROCEEDINGS

The below listed individual and State governmental entity are the parties to this proceeding.

Steven Rushing - Plaintiff - Petitioner

The Board of Supervisors for the University of Louisiana System (Southeastern Louisiana University) - Defendant - Respondent

CORPORATE DISCLOSURE STATEMENT

No party to this proceeding is a non-governmental corporation.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPPOSITION TO PETITION FOR WRIT OF CERTIORARI	1
STATEMENT OF THE CASE	2
Relevant Proceedings Below	2
Relevant Facts	2
REASONS FOR DENYING THE PETITION	4
I. THERE IS NO SPLIT IN AUTHORITY CONCERNING SPEECH THAT IS MOTIVATED IN PART BY PRIVATE INTERESTS, AND THE LOUISIANA COURT OF APPEAL CORRECTLY ANALYZED THE PUBLIC AND PRIVATE ASPECTS OF PETITIONER'S SPEECH AND APPLIED THE CORRECT LEGAL STANDARD	4
II. PETITIONER HAD NO ADVERSELY AFFECTED INTEREST ENTITLING HIM TO DUE PROCESS PROTECTION UNDER EITHER THE FEDERAL CONSTITUTION OR STATE LAW	7
III. THERE WAS NO VIOLATION OF PETITIONER'S FIRST AMENDMENT RIGHT TO FREE SPEECH SINCE HIS GRIEVANCES WERE NOT MATTERS OF PUBLIC CONCERN	10

TABLE OF CONTENTS – Continued

Page

IV. RESPONDENT DID NOT ENGAGE IN UNLAWFUL RETALIATION AGAINST PETITIONER UNDER TITLE VII OR THE AMERICANS WITH DISABILITIES ACT (ADA) SINCE THERE WAS A LEGITIMATE REASON FOR SUSPENDING PETITIONER FROM HIS TEACHING DUTIES 11

CONCLUSION 13

TABLE OF AUTHORITIES

Page

CASES

Azzaro v. County of Allegheny, 110 F.3d 968 (3d Cir. 1997) 6

Belk v. Town of Minocqua, 858 F.2d 1258 (7th Cir. 1988) 6

Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972) 7

Ciambriello v. County of Nassau, 292 F.3d 307 (2d Cir. 2002) 9

Cleveland Board of Education v. Loudermill, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985) 9

Connick v. Myers, 461 U.S. 138, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983) 5, 6, 10

Ezekwo v. Health and Hospitals Corp., 940 F.2d 775 (2d Cir. 1991) 9

Farhat v. Jopke, 370 F.3d 580 (6th Cir. 2004) 6

Goodisman v. Lytle, 724 F.2d 818 (9th Cir. 1984) 8

Huang v. Board of Governors of University of North Carolina, 902 F.2d 1134 (4th Cir. 1990) 9

Hulen v. Yates, 322 F.3d 1229 (10th Cir. 2003) 6

Johnson v. Louisiana, 369 F.3d 826 (5th Cir. 2004) 6

Johnson v. Southern University, 803 So.2d 1140 (La. App. 1st Cir. 2001) 8, 10

Kennedy v. Tangipahoa Parish Library Board of Control, 224 F.3d 359 (5th Cir. 2000), *rehearing en banc denied*, 99-30277, 11/16/00, 224 F.3d 359 (5th Cir. 2000) 5

Kilcoyne v. Morgan, 664 F.2d 940 (4th Cir. 1981) 8

TABLE OF AUTHORITIES – Continued

Page

Kovats v. Rutgers, The State University, 822 F.2d 1303 (3d Cir. 1987) 9

Long v. Eastfield College, 88 F.3d 300 (5th Cir. 1996) 11

Lovelace v. Southeastern Mass. U., 793 F.2d 419 (1st Cir. 1986) 8

Mullin v. Town of Fairhaven, 284 F.3d 31 (1st Cir. 2002) 6

Pool v. Van Rheen, 297 F.3d 899 (9th Cir. 2002) 6

Rushing v. Board of Supervisors of the U. of La. System, 885 So.2d 1136 (La. 2004) 1

Seaman v. CSPH, Inc., 179 F.3d 297 (5th Cir. 1999) 11

Sharp v. City of Houston, 164 F.3d 923 (5th Cir. 1999) 8

State v. Williams, 800 So.2d 790 (La. 2001) 1

Winegar v. Des Moines Independent Community Sch. Dist., 20 F.3d 895 (8th Cir. 1994), *cert. denied*, 513 U.S. 964, 115 S. Ct. 426, 130 L. Ed. 2d 340 (1994) 7

Wozniak v. Conry, 236 F.3d 888 (7th Cir. 2001), *cert. denied*, 533 U.S. 903, 121 S. Ct. 2243, 150 L. Ed. 2d 231 (2001) 7

STATUTES

Louisiana Constitution of 1974, Article 8, Section 6 2

La. R.S. 17:3217 2

TABLE OF AUTHORITIES – Continued

Page

OTHER

Louisiana Rules of Court – Uniform Rules, Courts of Appeal
Rule 2-16.3 4
United States Supreme Court Rules
Rule 10 1

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner presents no compelling reasons to review this case on a writ of certiorari. Sup. Ct. Rule 10. Plaintiff asserts a misapplication of rules of law, a circumstance under which a petition for writ of certiorari is rarely granted. Sup. Ct. Rule 10.

Petitioner does not demonstrate a conflict with a decision of another court of appeal; does not present an important federal question that should be decided by this Court; and does not show any departure from the accepted and usual course of judicial proceedings in the lower courts. Sup. Ct. Rule 10(a)-(c). The lower courts' factual findings and application of established law were correct and properly supported by the record. Because petitioner has presented no compelling reason and no reason of the character warranting review of a matter, this Court should deny the petition for writ of certiorari.

Additionally, this case has not been decided by the Louisiana Supreme Court. Instead, that court declined to review this case. *Rushing v. Board of Supervisors of the U. of La. System,* 885 So.2d 1136 (La. 2004). Such a denial of review has no precedential value. *State v. Williams*, 800 So.2d 790 at n.3 (La. 2001). The Louisiana Supreme Court has therefore not "decided" any of the issues in this case as contemplated by Supreme Court Rule 10(b).

STATEMENT OF THE CASE

Relevant Proceedings Below

Petitioner filed the first of his nine (9) employment grievances with Southeastern Louisiana University on November 11, 1998. Petitioner filed his lawsuit in the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana on September 13, 1999, Docket number 464510, Honorable Judge William A. Morvant presiding. The defendant filed a Motion for Summary Judgment which was granted on March 17, 2003, and petitioner's suit was dismissed. Petitioner appealed the dismissal to the First Circuit Court of Appeal of the State of Louisiana which rendered judgment on May 14, 2004, affirming the District Court's decision.

Petitioner filed an Application for Rehearing with the First Circuit Court of Appeal on May 28, 2004. The Application for Rehearing was denied by the First Circuit Court of Appeal on June 28, 2004. Petitioner filed an Application for Writ of Review to the Louisiana Supreme Court on July 30, 2004. The Application was denied by the Supreme Court of the State of Louisiana on November 8, 2004. Petitioner filed this Application for Writ of Certiorari to the United States Supreme Court, and respondent appears to oppose.

Relevant Facts

The Board of Supervisors for the University of Louisiana System is the management board established by the Louisiana Constitution of 1974, Article 8, Section 6 responsible for those institutions placed under its management and control by Louisiana statutes. La. R.S. 17:3217. Among those universities is Southeastern Louisiana University [SLU], at which petitioner Rushing serves in a

tenured faculty position. The dispute which forms the basis of this action is a claim for monetary damages for alleged violations of civil rights, due process and retaliation by respondent in handling petitioner's employment grievances.

At issue in this case are nine grievances filed by petitioner against respondent SLU. Grievances 1, 2, and 3 were appeals of an administrative decision denying a request to allow petitioner to participate in an outside opera production. The first raised questions about the professional funding process to the President of the Faculty Senate. The second protested to the head of the Music Department. The third charged the faculty committee with violating the rules for a prompt hearing on Grievances 1 and 2. All three were forwarded to the President of the University, again raising the issue of failure to proceed along the internal grievance process in a timely manner. Grievance 4 was filed against a provost and a member of the grievance committee who had received the previous three grievances on failure to proceed and render decisions quickly in the second and third grievances. The fifth grievance was against numerous officials and the grievance committee indicating that the ruling on abandonment or procedural ground failures was in error. The sixth grievance was to the head of the Music Department regarding the removal of a student from the petitioner's tutorage. Evidence submitted showed that removal was due to a complaint by a parent and verbal tirades regarding the student. The committee in fact held numerous hearings on this and found that, while there was not a violence in the workplace threat to all parties, anger management and other measures should be taken by petitioner to ensure removal of the problem in the future. The final seventh grievance was filed with the Music

Department, alleging that its requirements that petitioner undergo anger management counseling and furnish evidence to the committee or the University that he had completed it, were done merely to harass him.

REASONS FOR DENYING THE PETITION

I. THERE IS NO SPLIT IN AUTHORITY CONCERNING SPEECH THAT IS MOTIVATED IN PART BY PRIVATE INTERESTS, AND THE LOUISIANA COURT OF APPEAL CORRECTLY ANALYZED THE PUBLIC AND PRIVATE ASPECTS OF PETITIONER'S SPEECH AND APPLIED THE CORRECT LEGAL STANDARD.

Although petitioner has suggested that this Court should review the decision below based upon various purported splits in authority, this case does not squarely present a split in authority. Indeed, this case in no way created nor contributed to any split in jurisprudential authority. This case was decided by the Louisiana First Circuit Court of Appeal in an opinion clearly marked "Not Designated for Publication." Such opinions may not be cited, quoted, or referred to by any counsel, or in any argument, brief, or other materials presented to any court (except in continuing or related litigation). Rule 2-16.3, Louisiana Uniform Rules of the Courts of Appeal. As such, unpublished opinions cannot represent a "split in authority" since they have no precedential value whatsoever.

Petitioner further argues that (1) the Louisiana court erred by following a line of Fifth Circuit cases from which that circuit has since retreated and (2) there is a "deep and intractable split in authority concerning the role of private

motivation" in analyzing a public employee's speech. Neither of these assertions is correct.

Petitioner argues that the Louisiana First Circuit Court of Appeal held that "speech containing any element of private interest, however small, necessarily cannot also be of public concern. . . ." Petitioner's Brief at p.10. However, the Court of Appeal made no such ruling. Instead, the Court of Appeal held that, under the facts of this case, Dr. Rushing's speech was wholly on a personal matter under the test set forth in *Connick v. Myers*, 461 U.S. 138, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983). Thus, the court found that no mixed motive existed in Dr. Rushing's speech.

Furthermore, there is no split in authority on the issue of mixed motive speech. Petitioner claims that the Louisiana court followed jurisprudence from the Fifth Circuit Court of Appeals which is at odds with the law in other circuits. This is not the case. The jurisprudence in the various circuits is consistent in holding that speech which has a mixed motive (i.e., addressed matters of both public and private concern) is protected. In *Kennedy v. Tangipahoa Parish Library Board of Control,* 224 F.3d 359 (5th Cir. 2000), *rehearing en banc denied*, 99-30277, 11/16/00, 224 F.3d 359 (5th Cir. 2000), the Fifth Circuit conducted an exhaustive review and analysis of its earlier jurisprudence on First Amendment retaliation claims by public employees. The court concluded, in part, that

> the content of the speech may relate to the public concern if it does not involve *solely* personal matters or strictly a discussion of management policies that is only interesting to the public by virtue of the manager's status as an arm of the government. *Kennedy v. Tangipahoa Parish Library Bd. of Control, supra,* at 372, emphasis supplied.

Thus, the Fifth Circuit did not hold, as petitioner asserts, that "any private motivation or interest to the speech essentially disqualifies it from 'public concern' status." Petitioner's Brief at p. 14. Instead, the Fifth Circuit rule is that speech is not of public concern if it involves "solely" personal matters. Speech motivated by a mix of personal and public concerns *is* protected by the First Amendment under the Fifth Circuit's jurisprudence. Thus the Fifth Circuit did not, as Petitioner claims, "retreat" when it explicitly stated that speech which contains an element of personal interest can be protected by the First Amendment. (*Johnson v. Louisiana*, 369 F.3d 826, 831 at n.6 (5th Cir. 2004).

This is entirely consistent with the Supreme Court's standard set forth in *Connick* and with the jurisprudence of other circuits on the matter. See, e.g., *Mullin v. Town of Fairhaven*, 284 F.3d 31, 39 (1st Cir. 2002) (finding First Amendment protection when the plaintiff had mixed motives); *Azzaro v. County of Allegheny*, 110 F.3d 968, 978 (3d Cir. 1997) (noting that *Connick* indicates that a speaker's motive is often relevant but not dispositive in determining whether speech is of public concern); *Farhat v. Jopke*, 370 F.3d 580, 592 (6th Cir. 2004) (noting that the speaker's motive is not dispositive); *Belk v. Town of Minocqua*, 858 F.2d 1258, 1264 (7th Cir. 1988) (holding that the employee's motive is relevant but not dispositive); *Pool v. Van Rheen*, 297 F.3d 899 (9th Cir. 2002) (holding that a letter addressing both issues of personal and private concern was protected by the First Amendment); and *Hulen v. Yates*, 322 F.3d 1229, 1238 (10th Cir. 2003) (holding that speech which touches on matters of public concern does not lose protection merely because some personal concerns are included). Thus, the "split of authority" claimed by petitioner does not exist.

II. PETITIONER HAD NO ADVERSELY AFFECTED INTEREST ENTITLING HIM TO DUE PROCESS PROTECTION UNDER EITHER THE FEDERAL CONSTITUTION OR STATE LAW.

This Court has held that

> Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law – rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 2709, 33 L. Ed. 2d 548 (1972).

Petitioner cites two cases for the proposition that an academic may suffer a cognizable property deprivation as a result of employment actions which involve no loss in rank or salary: *Winegar v. Des Moines Independent Community Sch. Dist.*, 20 F.3d 895 (8th Cir. 1994), *cert. denied*, 513 U.S. 964, 115 S. Ct. 426, 130 L. Ed. 2d 340 (1994); and *Wozniak v. Conry*, 236 F.3d 888 (7th Cir. 2001), *cert. denied*, 533 U.S. 903, 121 S. Ct. 2243, 150 L. Ed. 2d 231 (2001). However, since property interests are created by state law, the analysis in each case must begin with what interests are protected by the law of the state at issue. In *Winegar*, the Eighth Circuit considered the case of a teacher who had a protected property interest in his employment by virtue of his continuing contract under Iowa law. *Winegar, supra*, at 899. In *Wozniak*, the Seventh Circuit analyzed property interests a professor had under "[Illinois] state law and the University's regulations." *Wozniak, supra*, at 890.

Louisiana courts have recognized that the due process clause does not provide a tenured faculty member with a property interest in each and every facet of his employment. In *Johnson v. Southern University*, 803 So.2d 1140 (La. App. 1st Cir. 2001), a Louisiana court of appeal considered the due process claim of a tenured professor who had been reassigned to teach only certain classes. The court held:

> There are no statutes, regulations or cases supporting Johnson's claim that he possesses a property interest in his class assignments. Moreover, Johnson does not claim that his contract with Southern University hampered the discretion of university officials to revise his class assignments. Absent a contractual provision limiting Southern University's right to reassign Johnson's classes, Johnson has no property interest in his particular class assignments. *Johnson, supra*, at 1145.

Petitioner's reliance on *Sharp v. City of Houston*, 164 F.3d 923 (5th Cir. 1999), and other cases concerning retaliation claims under Title VII is wholly inappropriate. Whether a given adverse employment action could constitute retaliation under Federal employment discrimination law has absolutely no bearing on whether that same action would deprive the employee of a property right under state law.

Petitioner correctly noted that courts have rejected cognizable property interests in various contractual expectations in public employment.[1] In the two opinions

[1] Of the cases cited for this proposition by petitioner, in *Lovelace v. Southeastern Mass. U.*, 793 F.2d 419 (1st Cir. 1986); *Goodisman v. Lytle*, 724 F.2d 818 (9th Cir. 1984); and *Kilcoyne v. Morgan*, 664 F.2d 940 (4th

(Continued on following page)

cited by petitioner in which courts did find Due Process protection for the employee, *Ezekwo v. Health and Hospitals Corp.*, 940 F.2d 775 (2d Cir. 1991); and *Ciambriello v. County of Nassau,* 292 F.3d 307 (2d Cir. 2002), the public employees were denied a position of higher rank and salary. However, petitioner was not demoted in rank, nor did he lose any compensation.

Petitioner Rushing's complaint that SLU's 'suspension' without prior hearing violated his due process is in error, and the First Circuit properly found so. *Cleveland Board of Education v. Laudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985), clearly provides that procedural due process entitles a public employee dismissed for cause only to a limited hearing prior to termination to present his version of the events. As the First Circuit noted, Dr. Rushing was never terminated nor suffered any loss of compensation. His pay was never interrupted. The First Circuit properly noted that a tenured employee's protected employment interest is satisfied by payment of his full compensation due. *Huang v. Board of Governors of University of North Carolina*, 902 F.2d 1134 (4th Cir. 1990). Therefore, the First Circuit was correct in finding that petitioner, having not been deprived of a property interest, has not been denied due process required under *Cleveland*.

Cir. 1981) the respective courts found that each of the plaintiffs did not have any interest protected by the Due Process clause. In *Kovats v. Rutgers, The State University*, 822 F.3d 1303 (3d Cir. 1987), the court did not make any finding as to whether a property right existed, but instead remanded the case because the district court did not address whether the plaintiffs had a property interest protected by the Due Process clause. In none of these cases did the court "reserve" the question of a property interest in a grievance procedure as petitioner suggests at pp. 29-30 of his brief.

The First Circuit was also correct in finding that due process violations did not occur with the failure to hold any additional hearings on those multiple grievances identified in the fact pattern and petitions. See *Johnson id.* at 1145. Therefore, the First Circuit was correct in upholding the trial court's dismissal of the claim of failure to follow completely an internal grievance process.

III. THERE WAS NO VIOLATION OF PETITIONER'S FIRST AMENDMENT RIGHT TO FREE SPEECH SINCE HIS GRIEVANCES WERE NOT MATTERS OF PUBLIC CONCERN.

The First Circuit additionally was correct in dismissing Dr. Rushing's argument that the failure to hear those grievances was a violation of his First Amendment rights to free speech and/or retaliation for filing of such grievances in violation of the First Amendment. The First Circuit Court properly noted that the employee must show that the speech involved a matter of public concern. *Connick v. Myers*, 461 U.S. 138, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983). As outlined in the fact patterns, grievances 1-5 were University decisions not to fund a request to participate in an opera. The court noted that this is an internal fiscal administrative decision purely personal to the petitioner. The remaining grievances identified in the fact pattern derive from a reassignment of a student from the petitioner to another professor, again clearly a personal matter. Therefore, the court correctly concluded that these speech matters were not matters of public concern. Consequently, Dr. Rushing could not prevail as a matter of law and summary judgment.

IV. RESPONDENT DID NOT ENGAGE IN UNLAWFUL RETALIATION AGAINST PETITIONER UNDER TITLE VII OR THE AMERICANS WITH DISABILITIES ACT (ADA) SINCE THERE WAS A LEGITIMATE REASON FOR SUSPENDING PETITIONER FROM HIS TEACHING DUTIES.

Lastly, the First Circuit addressed the petitioner's retaliation claims under either American with Disabilities Act (ADA) or Title VII, indicating there was no issue of material fact regarding the actions in his charge of discrimination with the EEOC. Again, the First Circuit was correct in identifying that, in order to do so, the petitioner had to establish that (1) he engaged in a protected activity under Title VII or the ADA, (2) an adverse employment action occurred, and (3) there was a cause or relationship between the two. *Seaman v. CSPH, Inc.*, 179 F.3d 297 (5th Cir. 1999), and *Long v. Eastfield College*, 88 F.3d 300 (5th Cir. 1996). If the plaintiff establishes a prima facia case, the defendant then is charged with coming forward with legitimate, non-discriminatory reasons for the adverse employment action, and the plaintiff must offer sufficient evidence to show that the defendant's reason is merely pretext. It is a but-for test as identified in *Seaman, id.* The petitioner alleges that the Grievance No. 7 and complaint of discrimination with the EEOC is the protected activity and that a suspension was in retaliation of the filing of this process. The First Circuit and the District Court were correct in disagreeing with petitioner's claims. They found that the University had a legitimate, non-retaliatory reason for the suspension of teaching duties, clearly identifying safety of faculty, staff and students following petitioner's verbal altercations with other professors and students. There was an administrative review regarding respondent's workplace violence policy as outlined within

the fact pattern. A first suspension was ordered purely for investigative purposes. The remainder of the time that petitioner was on suspension was due to petitioner's own failure to provide sufficient documentation that he in fact had met the requirements of counseling and evaluation. Therefore, both the District Court and the First Circuit were correct in finding there was no evidence to show, absent a filing of the internal grievance, EEOC complaint, and lawsuit, that these actions would not in fact have still occurred. Therefore, the First Circuit was correct in all matters and the writ must be denied.

CONCLUSION

The District Court and the First Circuit Court of Appeals properly held that the due process rights on all issues raised by petitioner were not in fact violated under State or Federal law and properly granted summary judgment dismissing this case in toto. A writ to the Louisiana Supreme Court was denied unanimously. This Court should deny a Writ for Certiorari in this matter.

Respectfully submitted,

CHARLES C. FOTI, JR.
Attorney General
STATE OF LOUISIANA

WINSTON G. DECUIR, Sr.*
Special Assistant Attorney General
LINDA LAW CLARK
Special Assistant Attorney General
DECUIR, CLARK AND ADAMS, L.L.P.
1961 Government Street
Baton Rouge, LA 70806
Phone: (225) 346-8716
Attorneys for Respondent

**Counsel of Record*

APPENDIX

(NOT DESIGNATED FOR PUBLICATION)

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2003 CA 0871

DR. STEVEN RUSHING

VERSUS

THE BOARD OF SUPERVISORS OF THE

UNIVERSITY OF LOUISIANA SYSTEM

(SOUTHEASTERN LOUISIANA UNIVERSITY)

APPLICATION FOR REHEARING FILED MAY 28, 2004

REHEARING DENIED JUNE 28, 2004

Appealed from the

First Circuit Court of Appeal

Honorable Frank Foil, Brady M. Fitzsimmons
and E. James Guidry, Judges

* * *

J. Arthur Smith III
Gregory A. Toney

Attorneys for Appellant
Plaintiff, Dr. Steven Rushing

T. Jay Seale, III
Russell W. Rudolph
Michael D. Bass
Hammond, LA and
Winston G. DeCuir, Sr.
Linda Law Clark
Baton Rouge, LA

Attorneys for Appellee
Defendant, The Board of
Supervisors of the University
of Louisiana System

Uniform Rules of Louisiana Courts of Appeal, Rule 2-16.3 Publication and Citation

A. A formal opinion of a Court of Appeal shall be designated for publication unless a majority of the panel determines otherwise.

B. A memorandum opinion or a summary disposition of a Court of Appeal shall not be designated for publication except by unanimous vote of the panel.

C. Opinions and dispositions marked "Not Designated for Publication" shall not be cited, quoted, or referred to by any counsel, or in any argument, brief, or other materials presented to any court, except in continuing or related litigation. Opinions marked "Not Designated for Publication" shall be filed in the clerk's office as public records.

D. The panel shall reconsider its decision not to publish an opinion upon the request of the trial judge or a party, provided that the request and reasons therefore are made in writing within the delays for rehearing following the rendition of the opinion.

LOUISIANA CONSTITUTION OF 1974, ARTICLE 8, SECTION 6

Section 6. Board of Supervisors for the University of Louisiana System

Section 6. **(A) Creation; Functions.** The Board of Supervisors for the University of Louisiana System is created as a body corporate. Subject to powers vested by this Article in the Board of Regents, it shall have supervision and management of state colleges and universities

not managed by a higher education board created by or under this Article.

(B) Membership; Terms. The board shall be composed of two members from each congressional district and one member from the state at large, appointed by the governor with consent of the Senate. The members shall serve overlapping terms of six years, following initial terms fixed by law.

(C) Vacancy. A vacancy occurring prior to the expiration of a term shall be filled for the remainder of the unexpired term by appointment by the governor, with consent of the Senate.

Louisiana R. S. 17:3217 – University of Louisiana System

The University of Louisiana system is composed of the institutions under the supervision and management of the Board of Trustees for State Colleges and Universities as follows:

(1) Grambling State University at Grambling.

(2) Louisiana Tech University at Ruston.

(3) McNeese State University at Lake Charles.

(4) Nicholls State University at Thibodaux.

(5) Northeast Louisiana University at Monroe.

(6) Northwestern State University of Louisiana at Natchitoches.

(7) Southeastern Louisiana University at Hammond.

(8) University of Southwestern Louisiana at Lafayette.

(9) Any other college, university, school, institution or program now or hereafter under the supervision and management of the Board of Trustees for State Colleges and Universities.